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August 20, 2001

VIA HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

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AUG 20 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY


Re: *Telecommunications Relay Services and Speech-to-Speech Services for
Individuals with Hearing and Speech Disabilities, Docket No. 98-67*

Dear Ms. Salas:

Enclosed is an original and four copies of the Reply Comments of Telecommunications for the Deaf, Inc. bearing the above caption. In addition to the required copies we have provided five additional copies for distribution to the Commissioners.

Please date stamp and return the enclosed extra copy of this filing. Any questions should be directed to the undersigned. Thank you very much.

Sincerely,


William L. Fishman

Enclosures

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 20 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Telecommunications Relay Services)
And Speech-to-Speech Services for) CC Docket No. 98-67
Individuals with Hearing and Speech)
Disabilities)

REPLY COMMENTS OF
TELECOMMUNICATIONS FOR THE DEAF, INC.

In a Public Notice released on June 29, 2001,¹ the Consumer Information Bureau sought additional comment on the provision of improved telecommunications relay service, setting a comment date of July 30, 2001, and reply comment date of August 20, 2001. Together with others, Telecommunications for the Deaf, Inc. ("TDI") filed initial comments. These are TDI's Reply Comments.

I. BACKGROUND

In its Public Notice the Consumer Information Bureau sought comment on a Petition for Clarification of the Commission's *Improved TRS Report Order and FNPRM*.² Specifically, The Notice seeks comment on Worldcom's request for clarification that its connection to TRS via the Internet, *i.e.*, IP Relay, is eligible for reimbursement from the Interstate TRS Fund. The Notice

¹DA 01-1555.

² *Improved TRS Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 98-67, 15 FCC Rcd 5140 (2000).

indicates that, while the Commission has already received 62 comments supporting WorldCom's request for reimbursement from the interstate fund, the Commission is seeking comments on certain specific questions. In summary fashion, the questions may be set forth as follows:

- Benefits
- Cost Recovery
- Minimum Standards
- IP Capabilities
- Security
- Outreach

In its initial Comments TDI responded to each of these issues. Most importantly, it emphasized its support for WorldCom's request that its IP Relay services be compensated out of the interstate TRS Fund. TDI fully supported Worldcom's efforts, and those of the Commission, to develop and to support the development of expanded, technology-based capabilities for those with hearing and speech disabilities and their contacts. Worldcom and a number of other carriers and organizations also submitted comments, and TDI replies herein briefly only to selected issues rather than to the full panoply of views.

II. COST RECOVERY

Recognition that the issue of cost recovery is crucial reflects the reality that private sector enterprises are organized to earn a profit for their shareholders and must have a reasonable opportunity to do so. TDI applauds the pioneering efforts of Worldcom and those of other carriers to serve those with hearing and speech disabilities and their contacts by creatively blending the capabilities of the Internet with the older technologies such as TTY and circuit-switched telephony. As it noted in its initial comments, the benefits of IP Relay are potentially very broad and very important, and every reasonable effort should be made by the Commission, consistent with its Congressional mandate, to encourage initiatives such as that demonstrated by

Worldcom.

While the issue of cost recovery is not entirely free from doubt because the nature of the IP Relay service is subject to some legal and factual uncertainty, the arguments presented by Worldcom to justify recovery from the interstate TRS Fund are reasonable and TDI finds them persuasive. In the absence of any presently existing technological capability for allocating incoming IP Relay Service calls between interstate and intrastate calls based on the geographic origin of the calls, the Commission should, at least for the moment, allocate all such traffic to the interstate pool, as it has done with the new VRS capability.³ Similarly, since there appears at present to be no fully reliable way to estimate the percentages of incoming calls as between those which are interstate and those which are intrastate, an allocation would appear to be arbitrary. The fact is that all the costs of establishing and operating an IP Relay Service are, as yet, somewhat uncertain, and it would introduce an undue element of administrative cost to attempt to segregate the calls by their specific nature. However, TDI, as noted in its initial comments, does not support TRS funding for computer-to-TTY calls, because no relay service is required in such a situation.

This is not to say that, in the future, some more refined methodology may not be appropriate, when the technology has become routine, the providers have acquired more operational experience, and the disability community has settled into a predictable routine demonstrating usage patterns and historical cost incursion. TDI also supports Worldcom's position that since IP Relay will offer features not available in traditional text-based relay, it

³ Notice, at 3.

should be considered an enhanced service, and as such is deemed to be interstate, whether or not individual calls are physically interstate or intrastate.⁴

AT&T asserts in its comments that on average its relay traffic is 90% intrastate and only 10% interstate.⁵ Accordingly, it urges the Commission to allocate funding 90% at the state level. However, AT&T has not provided any specifics about the time frame applicable to its traffic data, nor does it address the question whether historical patterns based on existing relay systems are likely to be valid for innovations like IP Relay. TDI is skeptical that AT&T's experience will prove applicable to the emerging era in which IP based traffic is largely insensitive to distance. TDI notes as well that, in any case AT&T has recommended that in the short run, and pending the acquisition of additional experience with IP Relay services, all relevant costs be covered by the interstate TRS fund due to the complexity and costs associated with having to establish payment arrangements with all fifty states. TDI agrees.

Other commenters, such as NAD and SHHH agree that, on an interim basis at least, IP Relay funding should come from the interstate TRS Fund. However, USTA's initial comments argue that IP Relay would not be entitled to compensation from the interstate TRS Fund if it is not a telecommunications service, citing section 225(d)(3)(B) of the Act. USTA poses the

⁴ Indeed, as Worldcom's letter of March 30, 2001 to the Bureau (App. A to Worldcom's initial comments) notes, the Commission has already determined that any relay service is an enhanced service and any enhanced service is an information service, which are deemed to be interstate.

⁵ AT&T Comments, at 5. The reliability of this statistic, however, is uncertain since AT&T also states that 33% of its protocol-conversion traffic is interstate. *See* AT&T Comments at 7. It is not clear why such a disparity should exist between all relay traffic and protocol-conversion relay traffic.

question whether the FCC is able to characterize IP relay as a telecommunications service; if not, says USTA, it is not qualified for interstate TRS funding.

TDI believes that USTA's views are based on too narrow and mechanistic a view of Congressional intent. If technology exists to establish or improve the "functional equivalency"⁶ of relay services, whether that technology would otherwise be defined under the Communications Act as "telecommunications" or "enhanced" or "information" service, the technology should be encouraged by Commission rule and policy without reference to the strict definition of terms, particularly when those terms and definitions have been adopted and construed in the context of ordinary users rather than those with special needs, and without reference to the broad and all-encompassing mandate in section 225 of the Act.⁷ Indeed, if USTA's view prevailed, the result would be the perverse exclusion of just the sort of innovative and technologically modern services IP Relay represents from access to the TRS Fund. This would, by discouraging the development of such services, disserve the public interest and fly in the face of the important Congressional purpose set forth in section 225 of the Act.

TDI notes that the Commission has already accepted the view that section 225 should not be construed as confined to telecommunications services only. In the *Report and Order and FNPRM* the Commission concluded that TRS "cannot be considered 'telecommunications' under

⁶ See 47 U.S.C. § 225(a)(3), speaking of the provision of communications in a manner that is "functionally equivalent" to that of non-disabled individuals.

⁷ Indeed, while § 225 is specifically directed to relay services, other sections of the Act, such as § 255 ("Access By Persons With Disabilities") and § 256 ("Coordination for Interconnectivity") may be construed to have some relevance, albeit secondary, to the instant context.

the definition in section 3 (43)"⁸ but that nevertheless section 225 does not prohibit it from requiring relay services to accommodate enhanced or information services:

[Section 225] expressly reaches enhanced or information services. In fact, section 225 specifically defines TRS as a service that "provides the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio... in a manner that is functionally equivalent to the ability of an individual who does not have [such an]... impairment to communicate using voice communication services by wire or radio." Communication by wire and radio encompasses both telecommunications and information or enhanced services.⁹

This view is fully consistent with prior Commission conclusions concerning the scope of its authority in respect to the adoption of policies and rules it deemed necessary to make telecommunications facilities and services available to the disabled. In *Implementation of Section 255 and 251(a)(2) of the Communications Act, Report and Order and Further Notice of Inquiry*,¹⁰ the Commission specifically disagreed with the contention that the language in the Act and its defined terms precluded extension of accessibility requirements to anything other than telecommunications services, and relied on its ancillary power to encompass voicemail and other information services within its rules.¹¹ In doing so the Commission noted that in sections 255 and 251(a)(2) Congress expressed the intent to ensure that telecommunications services be made available in the most efficacious manner.¹²

⁸ *Improved TRS Report and Order and FNPRM*, ¶ 81.

⁹ *Id.*, ¶ 88. *See also* ¶ 80, quoting the above language from § 225(a)(3).

¹⁰ 17 CR 837, 64 Fed. Reg. 63235 (1999).

¹¹ *Id.* at ¶ 104

¹² *Id.*, at ¶ 106.

Where a statute is ambiguous or unclear and an agency's interpretation of its own organic statute is reasonable, courts will normally defer to the agency. *See, e.g., Chevron v. National Resources Defense Council*, 467 U.S. 837, 842-3 (1984); *FDA v. Brown & Williamson Tobacco Co.*, 120 S.Ct. 1291, 1300 (2000); *AT&T Corp. v. FCC*, 226 F. 3rd 607 (D.C. Cir. 2000); *U.S. v. Alcan Alum. Corp.*, 964 F.2d 252-3 (3rd Cir., 1992). There can be little doubt that making IP Relay Services eligible for funding from the interstate TRS Fund will encourage a variety of providers to develop, market, and continuously improve their respective versions of the service. This sort of encouragement is fully in line with the Commission's obligations under section 225.

It is also well within the Commission's authority and jurisdiction taking account of the Commission's broad ancillary authority in sections 4(i)¹³ and 303 (r)¹⁴ to take such steps not prohibited otherwise by the Act as it reasonably deems necessary to effectuate its broad mandate, particularly in respect to the dynamic and rapidly evolving nature of telecommunications. *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) and *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968). More specifically, *see Rural Tel. Coalition v. FCC*, 838 F.2d 1307 (D.C. Cir. 1988) upholding the Commission's pre-statutory version of the universal service fund as ancillary to its responsibilities under Sections 1 and 4(i) of the Act, stating that "[a]s the Universal Service Fund was proposed in order to further the objective of making communications service available to all Americans at reasonable charges, the proposal was within the Commission's statutory authority." *See also North American Telecomm Ass'n. v. FCC*, 772 F.2d 1281, 1292-93 (7th Cir. 1985) (Section 4(i) empowers the Commission to stray a

¹³ 47 U.S.C. § 154(i).

¹⁴ 47 U. S.C. § 303(r).

little way beyond the apparent boundaries of the Act if necessary to regulate effectively those matters already within its boundaries). In short, USTA's contention that the Commission cannot fund non-telecommunications under section 225 or any other section of the Communications Act is contrary both to FCC and judicial precedent.

III. MINIMUM STANDARDS

In respect to technical standards and service obligations, it is important to keep in mind the Commission's earlier observation that functional equivalence -- the statutory goal -- "is, by nature, a continuing goal that requires periodic reassessment. The ever-increasing availability of new services and the development of new technologies continually challenge us to determine what specific services and performance standards are necessary to ensure that TRS is functionally equivalent to voice telephone service."¹⁵ With respect to technical details, TDI does not believe it is in general as qualified to comment as are industry members. TDI believes that, ideally IP Rely standards should be as high or, if they cannot be identical, at least in essence as demanding, as in the older relay services. On the other hand, it does not wish to inhibit private sector initiative or risk-taking by seeking the imposition of excessive, premature, or unreasonable regulatory requirements.

In this spirit TDI's initial comments indicated its willingness to accept a waiver of the 85/10 rule for IP-Relay Services. However, a number of carrier commenters have supported application of the rule to IP Relay Services. Certainly if the providers believe they can live with this rule TDI would not presume to know better, and of course would be happy to have the 85/10 standard apply if it is feasible. The bulk of the comment on technical standards is directed at

¹⁵ *Improved TRS Report and Order and FNPRM*, ¶ 4.

allowing industry to develop practical service standards over time as experience is gained with the new technology. TDI certainly agrees that this is wise, and that on balance it is better to have companies competing with each other to improve systems or operations than to rely on the government to establish and impose its own ideas about what is operationally and financially feasible.¹⁶ Certainly in the long run IP should add an important dimension to the panoply of relay services, and the last thing anyone wants to see is the premature imposition of excessive or unreasonable standards on industry.

In sum, after carefully reviewing the initial comments, TDI remains of the view that Worldcom's request for funding from the interstate Fund is fully justified both by the language of the Act and by any common sense application of Congressional intent.

Respectfully submitted,

Telecommunications for the Deaf, Inc.

By: William L. Fishman

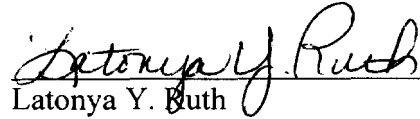
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¹⁶ There appears to be no dispute on this point. *See id.* at ¶ 36.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing REPLY COMMENTS OF
TELECOMMUNICATIONS FOR THE DEAF, INC. was sent by hand or by United States first-
class mail, postage prepaid on this the 20th day of August, 2001 to the parties on the attached list.



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